

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

Criminal No. 3:07-cr-138(DCB)(LRA)

JOSEPH McNEALY

DEFENDANT

ORDER

This cause is before the Court on the defendant/petitioner Joseph McNealy's Motion to Clarify Procedure to Obtain Information from Prior Counsel (**docket entry 132**). Having carefully considered the defendant's motion, and being fully advised in the premises, the court finds as follows:

This case is before the Court on the petitioner's Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255. Included in his petition are three claims alleging ineffective assistance of counsel:

GROUND ONE: Ineffective assistance of counsel during the pretrial process, when counsel failed to file a motion to suppress based on Mr. McNealy's arguably coerced consent to search, as more fully set forth in paragraphs (20) through (26) of the petitioner's Statement of Claim;

GROUND TWO: Ineffective assistance of counsel during the plea, trial and sentencing process, when counsel failed to advise him to proceed to a bench trial on stipulated facts, as more fully set forth in paragraphs (53) through (74) of the petitioner's Statement

of Claim;

GROUND THREE: Ineffective assistance of counsel due to the cumulative impact of multiple deficiencies or errors by counsel during the pretrial, plea, trial, sentencing and direct appeal process, as more fully set forth in paragraphs (75) through (85) of the petitioner's Statement of Claim.

In an Order entered March 20, 2012, the Court found that the petitioner had waived his right to claim an attorney-client privilege with regard to his ineffective assistance of counsel claims; ordered the Government to furnish copies of petitioner's pleadings to his former counsel, Kevin D. Camp, Esq., and Dean M. Boland, Esq.; and ordered his former counsel to respond within thirty (30) days from the date of entry of the Order to the allegations made by the petitioner concerning ineffective assistance of counsel. Neither attorney has submitted an affidavit. On September 24, 2012, the petitioner filed the present motion to clarify.

In his motion, McNealy requests appointment of counsel, discovery, and a hearing regarding his ineffective assistance of counsel claims. When the Court receives the aforementioned affidavits and/or a response to the petition by the Government, the relief requested will be considered by the Court. Accordingly,

IT IS HEREBY ORDERED that the defendant/petitioner Joseph McNealy's Motion to Clarify Procedure to Obtain Information from

Prior Counsel (**docket entry 132**) is GRANTED as set forth below. His requests for appointment of counsel, discovery, and a hearing will be further addressed at the appropriate time as set forth above;

FURTHER ORDERED that the Government shall advise the Court, within fourteen (14) days from the date of entry of this Order, regarding its efforts to obtain affidavits from McNealy's former counsel and how the Government wishes to proceed in this matter.

SO ORDERED, this the 9th day of November, 2012.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE